

FILED

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2012 MAY 16 PM 4:10

US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

VS.

CASE NUMBER: 6:12-mj-1244

JOSEPH BURRELL WAGNER, JR.

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. Beginning on or about a date unknown to the United States but no later than January 1, 2008, and continuing on or about August 4, 2011, in Volusia County, in the Middle District of Florida, defendant did,

knowingly and willfully execute and attempt to execute a scheme and artifice to defraud Medicare and Blue Cross / Blue Shied, health care benefit programs as defined in Title 18, United States Code, Section 24(b), in connection with the delivery of and payment for health care benefits, items, and services; and did knowingly and intentionally distribute and dispense a controlled substance, to wit Lortab (Hydrocodone) and Xanax.

in violation of Title 18, United States Code, Section 1347, and Title 21, United States Code, Section 841(a)(1), respectively. I further state that I am a Special Agent with FBI, and that this Complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No


Signature of Complainant
John F. Groeschner, Jr.

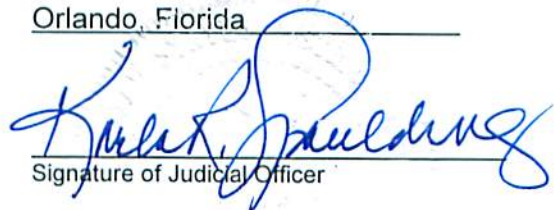
Sworn to before me and subscribed in my presence,

May 16, 2012

at

Orlando, Florida

The Honorable Karla R. Spaulding
United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

STATE OF FLORIDA
COUNTY OF ORANGE

CASE NO. 6:12-mj- 1244

AFFIDAVIT IN SUPPORT OF ARREST WARRANT

I, John F. Groeschner, Jr, being duly sworn, state as follows:

Introduction

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), United States Department of Justice, and have been employed as such since August 1995. For more than the past eight years, I have been assigned to the Daytona Beach Resident Agency of the Jacksonville Division of the FBI. My duties as a Special Agent include the investigation of violations of health care fraud, federal controlled substances laws, and other criminal violations related to the illegal distribution and dispensing of controlled substances. I am experienced in a wide range of investigations, including those involving organized crime, narcotics, financial crime, violent crime, fugitive apprehensions, and crime against children. I have attended training and educational courses sponsored by the Department of Justice, as well as other federal and state law enforcement agencies.

2. The information in this affidavit is based on my personal knowledge of, and participation in, this investigation, information from other criminal investigators and law enforcement officers, information from confidential sources, information from insurance companies, pharmacies, financial institutions, other business entities, and state and federal administrative agencies, as well as other documents and records obtained by law enforcement during the course of this investigation. The information set forth herein is provided solely for the purpose of establishing probable cause in

support of the requested arrest warrant. Because this affidavit is submitted for the limited purpose of establishing such probable cause, it does not include all of the details of this investigation of which I am aware.

3. This affidavit is submitted in support of an application for the issuance of an arrest warrant for **JOSEPH BURRELL WAGNER, JR. ("JOSEPH WAGNER")**, for violations of Title 18, United States Code, Sections 1347 (health care fraud) and Title 21, United States Code, Section 841(a)(1) (the illegal distribution and dispensing of controlled substances). As set forth in detail in this affidavit, there is probable cause to believe that **JOSEPH WAGNER** and others have committed those crimes and others. Further, I believe that **JOSEPH WAGNER** may be planning to flee the United States to avoid federal prosecution in this District for those offenses and others.

Prior Proceedings

4. On August 2, 2011, in the Orlando Division of the United States District Court for the Middle District of Florida, United States Magistrate Judge Karla R. Spaulding issued a warrant to search the business location of Wagner Chiropractic and Acupuncture Clinic (WCAC), located at 542 North Ridgewood Avenue, Daytona Beach, Florida. The warrant authorized, among other things, the seizure of evidence related to violations of Title 18, United States Code, Sections 1035, 1341, 1343, 1347, and 139, as well as violations of Title 21, United States Code, Sections 841 and 846. My affidavit supporting that warrant was, and continues to be, sealed by the Court. On August 4, 2012, other federal agents and I executed that federal search warrant at WCAC.

5. According to records maintained by the Florida Department of Health Practitioner Profile (FDHPP), at the time of the execution of the search warrant, WCAC was the primary place of business for **JOSEPH WAGNER**.

6. Further, at the time of the execution of the search warrant, **JOSEPH WAGNER** was a licensed chiropractor who held Florida Medical License Number CH3009. According to Medicaid records, **JOSEPH WAGNER** maintained Florida Medicaid Provider Number 050164600, which was related to Florida Medical License Number CH3009. Further, Medicaid payments for **JOSEPH WAGNER** were made to Space Coast Credit Union account number *****8057.

7. Following the execution of the search warrant, on or about August 12, 2011, the Florida Department of Health served **JOSEPH WAGNER** with an Emergency Suspension Order, and his medical license was revoked. On or about March 5, 2012, **JOSEPH WAGNER** relinquished his Florida Medical License.

Statutory and Administrative Authority
Underlying the Distribution and Dispensing of Controlled Substances

8. Title 21, United States Code, Section 841 prohibits a person from knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute, or dispense, a controlled substance, except as authorized by sub-chapter I of the Controlled Substances Act, Title 21, United States Code, Sections 801 through 904.¹ The exemption referred to in Section 841 authorizes certain persons, including licensed physicians, to obtain a registration enabling them to

¹ In addition, Florida Statutes Section 460.413(1)(p) prohibits chiropractors from prescribing, dispensing, or administering any medicinal drug.

legally distribute or dispense controlled substances “to the extent authorized by their registration.” 21 U.S.C. § 822(b). In United States v. Moore, 423 U.S. 122, 131 (1975), the Supreme Court held that “only the lawful acts of registrants are exempted” and that “the statutory language cannot be fairly read to support the view that all activities of registered physicians are exempted from the reach of Section 841 simply because of their status.”

9. In order for a prescription to be valid and authorized by law, it must meet several requirements. First, all “prescriptions for controlled substances shall be dated as of, and signed on, the day when issued” 21 C.F.R. § 1306.05(a) (emphasis added). Second, although 21 C.F.R. § 1306.05 permits prescriptions to be prepared by a “secretary or agent” for the signature of a practitioner, the regulation contemplates that the prescription be prepared before, not after, it has been signed. The regulation states: “The prescription may be prepared by the secretary or the agent for the signature of a practitioner” (emphasis added). Third, for the distribution of a controlled substance to be authorized by law, it must be prescribed “for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 C.F.R. § 1306.04(a).

10. The Drug Enforcement Administration (DEA) has determined that certain prescription medications are “controlled” based on their potential for addiction and abuse. The DEA assigns “schedules” to these prescription medications according to their potential for abuse and addiction, with a controlled substance medication in Schedule II having the highest potential for addiction and abuse. Prescription drugs that are “controlled” are assigned to Schedule II, III, IV, or V.

11. Hydrocodone (i.e., Vicadin and Lortab) is a Schedule III controlled substance. See 21 U.S.C. § 812; 21 C.F.R. §1308.13(b).
12. Alprazolam (Xanax), is a Schedule IV controlled substance. See 21 U.S.C. § 812 ; 21 C.F.R. §1308.14(c).
13. Diazepam is a Schedule IV controlled substance. See 21 U.S.C. § 812; 21 C.F.R. §1308.14.
14. "CMS-1500" is a standardized form common to the medical community and is used by medical providers as a billing invoice to health care benefit providers. CMS is an abbreviation for "Centers for Medicare and Medicaid Service." The CMS-1500 contains, in addition to other information, the following: the beneficiary's name, the beneficiary's biographical and insurance information, dates of service, medical procedures performed, services or supplies provided by the health care professional, submitted charges, and the name and signature of the medical professional who provided the services. "CMT" is a coding on a CMS-1500 and stands for "Chiropractic Manipulative Treatment."

Initiation of the Investigation

15. In 2009, the Personal Injury Protection (PIP) Fraud Squad of the Florida Department of Financial Services (DFS) opened an investigation into WCAC after receiving complaints about WCAC from the Special Investigative Units (SIUs) of several private automobile insurance carriers. These complaints concerned charges submitted to the insurance carriers by WCAC for medical and chiropractic services and treatments that the SIUs determined, through interviews with the insured, had never taken place.

16. Based upon the complaints from the SIUs of the insurance carriers, DFS compiled records from the insurance companies, including Examinations Under Oath of the policy holders, and instituted an investigation which included undercover operations.

17. After a DFS detective acting in an undercover capacity met with **JOSEPH WAGNER** at WCAC and obtained evidence of insurance fraud (billing for services never rendered) and illegal drug distribution (obtaining prescriptions for controlled drugs, prescribed by **JOSEPH WAGNER** using the name and DEA number of another medical doctor who had never examined or treated the undercover officer), DFS referred the case to the FBI in June 2010.

FBI Investigation Following the Execution of the Search Warrants

18. After the FBI adopted the investigation, operations using both undercover law enforcement officers and confidential sources (CS), were either continued or established. Evidence of insurance fraud, health care fraud, and illegal drug distribution was developed during the continuing investigation, resulting in the issuance of the previously referenced search warrant in the Middle District of Florida.

19. During the execution of the search warrant, patient records were seized from WCAC. Also seized were computer records and financial records. Financial records reviewed during the investigation of this case have revealed that **JOSEPH WAGNER** maintained at least one bank account in the Dominican Republic, and that the account had a balance of approximately Three Million in Dominican currency, the equivalent to approximately \$76,800 in U.S. currency.

20. Following the execution of the search warrant, over 60 individuals were interviewed by myself or other federal agents. Generally, all of the interviews determined the same basic set of facts. None of the WCAC customers had ever been treated or examined by anyone other than **JOSEPH WAGNER** or, in some instances, by **JOSEPH WAGNER's** son. Yet those customers had received prescriptions for Schedule III and Schedule IV drugs, primarily Lortab (Hydrocodone) and Xanax, from medical doctors who had never examined or treated the customers. All of the prescriptions were relayed to various local pharmacies in the Daytona Beach area by telephone or facsimile after the customers had been to WCAC and had seen **JOSEPH WAGNER**. Customers who did not have any type of health insurance paid **JOSEPH WAGNER** \$100 cash, every month, and received a monthly prescription for controlled substances, as well as a "back crack" from **JOSEPH WAGNER**. Office visits generally lasted approximately five minutes. Other customers, who were on social security disability and were covered by Medicare, received weekly prescriptions for controlled substances in the same manner. However, their Medicare coverage was billed for treatments provided by a medical doctor who had never treated or examined them. Other customers, who were covered by a private health insurance plan, were provided weekly prescriptions for Schedule III and Schedule IV controlled substances, again relayed either by telephone or facsimile to local pharmacies. The prescriptions were issued by a medical doctor who had never treated or examined the customers, and the customers' private health insurance plans again were billed in the name of doctors who had never treated or examined the customers.

21. For example, on November 2, 2011, another agent and I interviewed S.B. S.B. has been on social security disability since 1996 as a result of injuries sustained in a car accident. S.B. began going to see **JOSEPH WAGNER** at WCAC in 1996, believing that **JOSEPH WAGNER** was a chiropractor and a medical doctor, because those titles were advertised on the sign outside of WCAC. S.B. first began receiving controlled substances from **JOSEPH WAGNER**. **JOSEPH WAGNER** would write prescriptions for controlled substances for S.B. using a prescription pad in the name of a medical doctor that had never examined or treated S.B. The method of S.B. obtaining controlled substances from **JOSEPH WAGNER** changed three to four years ago, when **JOSEPH WAGNER** began telephonically relaying prescriptions to a local pharmacy, rather than providing S.B. with a traditional prescription from a pad. **JOSEPH WAGNER** often called the prescriptions for controlled substances in to the pharmacy in S.B.'s presence. S.B. would go to WCAC once per week, but noticed that on S.B.'s Medicare Explanation of Benefit (EOB) forms, that Medicare was being billed for treatments three times per week. Every time that S.B. went to WCAC, **JOSEPH WAGNER** instructed S.B. to sign a blank CMS-1500 form. Initially, S.B. signed three to four CMS-1500 forms per visit, but within the past year, signed only one to two CMS-1500 forms per visit.

22. On a weekly basis, S.B. received the following prescriptions from **JOSEPH WAGNER**: 40 tablets of Lortab (Hydrocodone), 21 tablets of Xanax, and 21 tablets of Soma. S.B. also received other prescriptions drugs from **JOSEPH WAGNER** if S.B. was ill. S.B. has never been treated or examined by the doctors in whose name

the controlled substances were prescribed. I also reviewed copies of S.B.'s medical files from WCAC, and noticed that the files contained no notes or treatments, but consisted solely of copies of CMS-1500 billing forms. S.B. recently received Medicare EOB's showing reimbursements for treatments at WCAC for the month of August 2011, although S.B. never once went to WCAC in August 2011.

23. On November 2, 2011, another federal agent and I interviewed T.P. T.P. began going to WCAC for chiropractic treatments approximately two years ago. Every time T.P. went to WCAC, **JOSEPH WAGNER** instructed T.P. to sign at least two blank copies of a CMS-1500 form. I reviewed a copy of T.P.'s file seized from WCAC, and counted forty-five CMS-1500 forms submitted to T.P.'s insurance company, Blue Cross/Blue Shield (BC/BS) from WCAC. All of these CMS-1500 forms were for treatment received from a medical doctor who, according to T.P., had never examined or treated T.P. The only person who T.P. received treatment from at WCAC was **JOSEPH WAGNER**, who told T.P. that he (**JOSEPH WAGNER**) was a Physician Assistant. According to T.P., **JOSEPH WAGNER** routinely "popped" T.P.'s back. **JOSEPH WAGNER** would then prescribe 40 tablets of Lortab (Hydrocodone), 21 tablets of Soma, and 15 tablets of Mobic, per week. All of the prescriptions were filled at local pharmacies, and T.P. recalled seeing on the pill bottles the name of a medical doctor who had never treated or examined T.P. T.P. also said that T.P. never received physical therapy, ultrasound therapy, or any of the other therapies billed to BC/BS under that medical doctor's name. According to T.P., none of T.P.'s visits to WCAC lasted longer than five minutes.

24. On February 1, 2012, another federal agent and I interviewed E.I., a customer of **JOSEPH WAGNER's** at WCAC. E.I. began going to see **JOSEPH WAGNER** at WCAC beginning in November 2010, and E.I.'s last visit to WCAC was on or about August 1, 2011. E.I. visited WCAC monthly, always seeing **JOSEPH WAGNER** and paying him \$100 cash, which **JOSEPH WAGNER** put in his pocket without providing E.I. with a receipt. According to E.I., at the visits to WCAC, **JOSEPH WAGNER** gave E.I. a chiropractic adjustment that lasted about 30 seconds, and consisted of **JOSEPH WAGNER** cracking her neck on a chiropractic table and cracking her back as she stood against a wall. **JOSEPH WAGNER** also provided E.I. with monthly prescriptions of 90 tablets of Lortab (Hydrocodone), later reduced to 60 tablets; 90 tablets of Xanax, later reduced to 60 tablets; 90 tablets of Soma, later reduced to 60 tablets; and 30 tablets of Zoloft. E.I. stated that **JOSEPH WAGNER** called in or faxed the prescriptions to a local pharmacy. At some point, E.I. noticed that the prescribing doctor, listed on the pill bottles, was a medical doctor that had never examined or treated E.I., although E.I. had seen someone she believed to be that medical doctor at WCAC on one occasion.

25. On March 7, 2012, I interviewed M.B. and reviewed with M.B. the medical file of M.B. seized during the search of WCAC. M.B. concurred that M.B.'s first visit was on or about July 29, 2010, as indicated in the file, but believes that M.B. went to WCAC on two occasions, although only the date of July 29, 2010, was indicated in M.B.'s file. According to M.B., M.B. went to WCAC to see **JOSEPH WAGNER** and M.B. paid **JOSEPH WAGNER** \$100 cash per visit, since M.B. did not have health

insurance. M.B. stated that on July 29, 2010, M.B. received prescriptions for 120 tablets of Lortab (Hydrocodone), 90 tablets of Xanax, and 90 tablets of Soma, which **JOSEPH WAGNER** called in to a local pharmacy. On July 31, 2010, M.B. accidentally overdosed on the prescription pills M.B. had obtained a few days prior from **JOSEPH WAGNER**, and was taken to the hospital. I reviewed with M.B. a police report concerning the overdose. Three of the four prescription bottles found by the police after her accidental overdose were issued in the name of a medical doctor that I know based upon this investigation to be associated with **JOSEPH WAGNER's** illegal distribution of controlled substances. According to M.B., the medical doctor listed on the prescription bottles had never treated or examined M.B., and M.B. does not know who he is.

Current Status of the Investigation and Flight by **JOSEPH WAGNER**

26. Based upon my investigation, I believe that **JOSEPH WAGNER** and WCAC is charging cash for services, or is submitting fraudulent insurance claims, both to government insurance programs and private insurance programs, in order to provide controlled substances to customers. In some cases, these customers are Medicaid beneficiaries, which I have corroborated through a review of records from the Florida Medicaid Fraud Control Unit relating to the medical doctors in whose names **JOSEPH WAGNER** issued controlled substances. **JOSEPH WAGNER**, a chiropractor who is not authorized to prescribe any drugs, submitted prescriptions for customers on pre-stamped or pre-signed prescription pads using the names and DEA numbers of medical doctors, making each such prescription unlawful. See 21 C.F.R. § 1306.05(a); 21 C.F.R. § 1306.04(a).

27. During the course of this investigation, a number of confidential sources were developed or utilized. One such confidential source, who has no criminal history and is not facing criminal charges and is cooperating because of a desire to assist law enforcement in an effort to prevent the abuse of prescription drugs, reported on May 6, 2012, that the confidential source overheard a conversation that day between Wagner family members. Based upon that overheard conversation, the confidential source believed that **JOSEPH WAGNER** was planning on fleeing the United States in an attempt to evade criminal prosecution based upon this investigation. I believe that the information provided by the confidential source is reliable because the source's information has been corroborated during the course of this investigation.

28. I believe that **JOSEPH WAGNER** is aware of the nature and seriousness of this investigation, his status as a target of this investigation, and the fact that he will be charged in relation to the information contained in this affidavit because of the execution of the federal search warrant, and because on March 22, 2012, **JOSEPH WAGNER** and his attorney met with federal agents and Assistant United States Attorney Daniel C. Irick in a proffer concerning the facts of this investigation.

29. On May 14, 2012, I received the following information from Customs and Border Protection (CBP):

a. On April 3, 2012, **JOSEPH WAGNER** booked a round-trip ticket from the United States to the Dominican Republic. Based on that booking, on April 4, 2012, **JOSEPH WAGNER** departed the United States from Orlando, Florida and traveled to Santo Domingo, Dominican Republic, and returned to Orlando on April 9, 2012.

b. On April 10, 2012, **JOSEPH WAGNER** booked a round-trip ticket from the United States to the Dominican Republic. Based on that booking, **JOSEPH WAGNER** departed the United States on April 26, 2012 from Orlando, Florida and traveled to Santiago, Dominican Republic, and returned to Orlando on May 5, 2012.

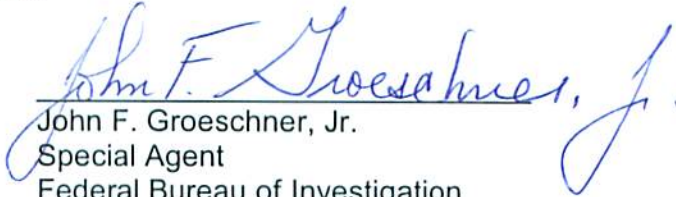
c. On the day he arrived in Orlando from his last trip, May 5, 2012, **JOSEPH WAGNER** booked a one-way ticket from the United States to the Dominican Republic. Based on that booking, **JOSEPH WAGNER** is scheduled to depart Orlando on May 16, 2012, for Santiago, Dominican Republic. Unlike his previous travel to the Dominican Republic, **JOSEPH WAGNER** has no return trip to the United States scheduled.

30. On May 15, 2012, I received a call from the confidential source who told me that **JOSEPH WAGNER** was scheduled to depart the United States for the Dominican Republic on Wednesday, May 16, 2012. This information corroborated the above-mentioned information that I had already received from CBP. According to the confidential source, **JOSEPH WAGNER** planned to remain in the Dominican Republic for at least a month, and intended to marry a prostitute he met there, before allegedly returning to the United States at an unspecified, later date.

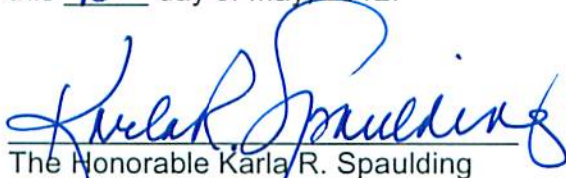
Conclusion

31. Based on the foregoing, I believe that there is probable cause to believe that **JOSEPH WAGNER** has violated Title 18, United States Code, Sections 1347 (health care fraud) and Title 21, United States Code, Section 841(a)(1) (the illegal distribution and dispensing of controlled substances), and may currently be attempting to flee the United States in order to escape prosecution for those offenses, as well as others, and respectfully request that the Court issue an arrest warrant authorizing myself or any other duly authorized law enforcement official to arrest **JOSEPH WAGNER**.

This concludes my affidavit.


John F. Groeschner, Jr.
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me
this 16th day of May, 2012.


The Honorable Karla R. Spaulding
United States Magistrate Judge